IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1789 OF 1995

National Insurance Co.Ltd. & Anr. ..Plaintiffs.

V/s.

M/s.Okara Trade Parcel Carriers ..Defendant.

Mr.Pankaj Thatte a/w Sucheta Joshi i/b. S.U.Phadke for plaintiffs.

Mr.L.B.Sonawane, Adm. officer of Plaintiff No.1.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 19, 2007.

P.C. :

1. This suit is placed under caption "undefended suit" in terms of the order dated 28th July, 2000. None appears for the defendant. No written statement has been filed on behalf of the defendant.

2. In substance, the case of the plaintiffs is that the plaintiff No.2 entrusted certain goods i.e. Waste Papers described as "Kraft Waste" weighing 8870 Kgs. to the defendant for being transported from plaintiff No.2, Bombay to one Khatima Fibre Ltd. at Delhi. The said goods were delivered to M/s. Khatima Fibres Ltd., Khatima in completely damaged condition. The plaintiff No.1 had ensured the said goods. The plaintiff No.1 has paid requisite amount

to plaintiff No.2 for the loss suffered by the plaintiff No.2 which was covered under the Insurance policy. It is in this backdrop, the plaintiffs have jointly approached this Court for recovery of the sum of Rs.62,436/-, which became due and payable by the defendant to the plaintiff No.1. The plaintiffs have asked for following reliefs in this suit.

> "a) that the Defendant be ordered and decreed to pay to the Plaintiff No.1 or in the alternative to the Plaintiff No.2 a sum of Rs.62,436/- with further interest at the rate of 18% per annum from the date of the suit till payment of realisation;
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> b) for cots of the suit;
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> c) for such further and other reliefs as the nature and circumstances of the case may require."

3. As mentioned earlier, inspite of service, the defendant has chosen not to appear in the matter. No written statement has been filed on behalf of the defendant. On the other hand, the plaintiffs have filed affidavit of examination in chief dated 19th

July, 2007, sworn by Mr.L.B.Sonawane, Administrative Officer of the plaintiff No.1 to depose on its behalf. The affiant Mr.Sonawane is personally present in the Court today. The affiant reiterates the position stated in the plaint. Besides, the affidavit of evidence, the plaintiffs have also produced original documents on which reliance is placed by the plaintiffs to buttress their claim.

4. On perusing the affidavits as well as the documents produced by the plaintiffs, the case made out by the plaintiffs appears to be plausible. There is nothing on record to doubt the correctness of the stand taken by the plaintiffs. In the circumstances, the plaintiffs are entitled for relief in terms of prayer clause (a) of the plaint.

5. Accordingly, I proceed to dispose of the suit in exercise of powers under Order 8 Rule 10 of Civil Procedure Code by passing following order.

ORDER

Suit is decreed in terms of prayer clause (a) with costs. Decree be drawn up accordingly.

(A.M.KHANWILKAR,J)